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GERALD ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,) No. 157 680
11 a California not-for-profit)
religious corporation,)
12)
Plaintiff,)
13)
vs.)
14)
GERALD ARMSTRONG; MICHAEL WALTON;)
15 THE GERALD ARMSTRONG CORPORATION,)
a California for-profit)
16 corporation; DOES 1 through 100,)
inclusive,)
17)
Defendants.)
18)
Date: 7/1/94
Time: 2:30 p.m.
Dept: Referee Benz
Trial Date: 9/29/94

19 I. INTRODUCTION

20 Armstrong's request for production covers documents relating
21 to the three main issues in this case:

22 1. Armstrong's alleged fraudulent conveyances, which
23 plaintiff seeks to have set aside, and for which it demands
24 \$4,800,000 in damages;

25 2. Armstrong's alleged breaches of the 1986 subject
26 "settlement agreement," which plaintiff turns into a several
27 million dollar liquidated damages claim, that in turn becomes the
28

1 basis for plaintiff's fraudulent conveyance claim; and,

2 3. What plaintiff, and the rest of the Scientology
3 beneficiaries to the "settlement agreement," has done to cause
4 Armstrong to do the things plaintiff alleges; i.e., the context
5 for Armstrong's acts and plaintiff's claims.

6 Armstrong denies that he has fraudulently transferred
7 anything to anyone at any time. And, while admitting that he did
8 do most of the acts which plaintiff calls "breaches," he denies
9 that plaintiff is owed nothing for such acts. Armstrong's
10 verified answer, to which plaintiff has not demurred or objected,
11 contains forty affirmative defenses which go to the heart of the
12 case, the truth underlying plaintiff's claims.

13 C.C.P. § 2017(a) states that a party may obtain discovery

14 "[R]egarding any matter, not privileged, that is
15 relevant to the subject matter involved in the pending
16 action...if the matter either is itself admissible in
17 evidence or appears reasonably calculated to lead to the
18 discover of admissible evidence. Discovery may relate
19 to the claim or defense of the party seeking discovery
20 or any other party to the action."

18 Code of Civil Procedure section 2031 (1) states in part "If
19 the party demanding an inspection, on receipt of a response to an
20 inspection demand, deems that (1) an answer to a particular
21 request is evasive or incomplete, or (2) an objection to a
22 particular request is without merit or too general, that party may
23 move for an order compelling a further response."

24 **II. STATEMENT OF FACTS**

25 Plaintiff Church of Scientology International (CSI) has sued
26 Gerald Armstrong, The Gerald Armstrong Corporation, and Michael
27 Walton for allegedly fraudulently conveying a house and cash in
28 order to defeat CSI's ability to collect damages for the alleged

1 breaches of a settlement contract with Armstrong.

2 Thus, CSI's claim is necessarily predicated upon that
3 settlement contract. As matters in defense, Armstrong asserts
4 that his compliance was obtained by duress that was generated by
5 CSI's inalterable adherence to certain policies and practices.

6 In his answer Armstrong states:

7 Armstrong denies that the agreement contained carefully
8 negotiated and agreed-upon provisions. Armstrong was
9 not included in one word of the negotiations, which were
10 engineered by CSI through its fair game operations
11 toward and compromise of Armstrong's attorney, Michael
12 Flynn. Armstrong never agreed to the conditions, but
did agree with the representations of his attorney that
the conditions were unenforceable. CSI intended and
used the settlement to continue its litigation war with
Armstrong, and to extend its use of litigation to attack
its perceived enemies.

13 [Answer filed 11/30/93, at 2:4-13]

14 Foremost among said policies is that named fair game. An
15 individual or entity is subject to said policy if he is considered
16 by Scientology as an enemy. In its opinion in Church of
17 Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, the Second
18 District Court of Appeal upheld Judge Breckenridge's decision in
19 Armstrong's favor ¹/ when Scientology first sued him and found:

20 Commencing in February 1992, the international Church of
21 Scientology issued a series of "suppressive person
22 declares" in effect labeling Armstrong an enemy of the
23 Church ... These "declares" subjected Armstrong to the
24 "Fair Game Doctrine" of the Church, which permits a
25 suppressive person to be "tricked, sued or lied to or
26 destroyed ... [or] deprived of property or injured by
any means by any Scientology

27 ¹ A copy of this decision has been filed herein on October
28 28, 1993 as Exhibit 1.A in Vol. I of Defendants' Evidence In
Support Of Defendants' Motion To Commence Coordination Proceedings
(hereinafter "Breckenridge Opinion").

1 (Id. 232 Cal.App.3d at 1067) ²/
2

3 In the current litigation, Armstrong's Eleventh Affirmative
4 defense of Duress and Undue Influence states:

5 Plaintiff is barred from bringing this action
6 against Armstrong because it implemented fair game
7 stratagems on Armstrong, his attorney Michael Flynn, and
8 upon other anti-Scientology litigants and would continue
9 such conduct against all such persons unless all such
10 anti-Scientology litigants, including Mr. Flynn, signed
11 settlement agreement substantially similar to that
12 signed by Armstrong.

13 [Answer filed 11/30/93, at 13:3-9]

14 **III. SCIENTOLOGY HAS FAILED TO SUFFICIENTLY RESPOND**
15 **TO CERTAIN REQUESTS FOR INSPECTION**

16 **A. The Requests Pertaining To Fair Game**

17 Armstrong's document requests Nos. 5, 11, 12, 13, 14, 26, 27,
18 28, and 29 concern Scientology's acts against Armstrong's former
19 attorney Michael Flynn, Judge Breckenridge who presided over the
20 Armstrong I trial, attorney Michael Walton who represented
21 Armstrong in Scientology's appeal from the Breckenridge decision,
22 and Ford Greene, who presently represents Armstrong. CSI
23 interposes the same boilerplate objections, and asserts attorney-
24 client and work product privileges. No privilege log has been
25 offered or provided.

26 The only document that plaintiff has provided is one
27 "Freedom" magazine devoted to Armstrong, where there have been
28

29 ² California courts of appeal are no strangers to the harm
30 wreaked by fair game. (see Wollersheim v. Church of Scientology
31 (1989) 212 Cal.App.3d 872, 888 [fair game is the modern equivalent
32 to the Christian inquisitional practice of destroying heretics by
33 stripping him of his economic, political and psychological power];
34 Allard v. Church of Scientology (1976) 58 Cal.App.3d 439, 444
35 [former Church member falsely accused by Church of grand theft as
36 part of fair game policy, subjecting him to arrest and
37 imprisonment])

1 several, and produced some very old materials from Armstrong's Sea
2 Org ethics files, but no "mission files," or other files
3 pertaining to Scientology "justice" procedures. As to other major
4 categories plaintiff has falsely denied possession of any
5 responsive documents; e.g., nos. 15, 16, 17, and 25.

6 Request no. 17 asks for Guardian's Office intelligence bureau
7 files. Scientology produced some of such documents in the
8 Christofferson case, and in Armstrong I, but here claims to not
9 have any. (see Armstrong declaration, ¶ 8) Plaintiff has also
10 refused to produce its Office of Special Affairs (OSA) documents.
11 OSA is the successor entity to the Guardian's Office, is
12 responsible for attacks on Armstrong, and its documents relating
13 to him are clearly relevant.

14 Request for production no. 15 and plaintiff's response
15 thereto is revealing. Armstrong details twelve Scientology
16 intelligence "operations," naming organization participants and a
17 brief description, and asks for documents concerning, referring to
18 or forming part thereof. While responding that it has no such
19 documents, CSI has produced a "dead agent pack" relating to Judge
20 Breckenridge in response to Request No. 10, in which Scientology
21 gives its detailed version of an aspect of the operations against
22 Armstrong. Relevant pages from the Breckenridge dead agent pack
23 are attached to the Armstrong declaration as Exhibit B and
24 incorporated herein by reference. Moreover, in support of its
25 demurrer to Armstrong's second amended cross-complaint plaintiff
26 appended a declaration by David Miscavige, the organization's
27 managing agent and cross-defendant herein, in which he details the
28 organization's version of said intelligence operations. (Relevant

1 pages from the Miscavige declaration are attached to the Armstrong
2 declaration as Exhibit E) Further, pursuant to Scientology's own
3 policies, "every order an executive issues must be in writing." A
4 copy of the relevant page from Scientology policy "Order Board and
5 Time Machine" and the copyright page from the book in which said
6 policy was printed in 1986 are attached to the Armstrong
7 declaration and incorporated herein by reference. Plaintiff's
8 claim of having no documents in response to this request is
9 unbelievable and untrue.

10 Armstrong's document requests Nos. 1, 7, 10, 15, 16, 17, 18,
11 19, 20, 22, 23, 24, 25, 42, 43, 44, 45, 46, 47, 48, 51 and 52
12 concern Scientology's years of fair game attacks on Armstrong.
13 The requested documents all go to Armstrong's defenses; e.g.
14 Affirmative defenses 6 (unclean hands), 8 (estoppel) and 9
15 (waiver). Armstrong contends that Scientology's own illegal and
16 antisocial acts against him and others precipitated any acts by
17 him, and that Scientology waived any right to enforce the subject
18 "settlement agreement" as a result of its acts. Plaintiff has
19 interposed boilerplate objections, and agreed only to produce
20 documents in response to nos. 10 (documents to media), 20
21 (documents to government), 24 (reports), 43 (documents on which
22 Scientology based its claims in the Miller case, and 45 (private
23 investigator reports). The documents produced are a mere fraction
24 of the materials CSI and its related entities possess in the
25 categories requested, and are unacceptable. Plaintiff, for
26 example produced a copy of one "Freedom" magazine devoted to
27 Armstrong, where there have been several, and produced some very
28 old materials from Armstrong's Sea Org ethics files, but no

1 "mission files," or "justice" files. In other major categories
2 plaintiff has falsely denied possession of any responsive
3 documents; e.g., nos. 15, 16, 17, and 25.

4 Request for production Nos. 6, 31, 32, 33, 34, 36, 37, 38,
5 39, 40 and 41 call for Scientology's policies and orders
6 concerning "suppressive persons," "enemies" and "squirrels," all
7 of which CSI considers Armstrong; policies and orders concerning
8 "ethics" and punishment; and the use of private investigators.
9 Plaintiff has interposed boilerplate objections and refuse to
10 produce any documents. The requested documents are necessary to
11 an understanding of the context in which Armstrong acted and why
12 Scientology subjects Armstrong to attack and is able to get its
13 members to participate in such attacks. Scientology's basic
14 policy which orders that persons designated "enemies" are
15 "suppressive persons" subject to the "fair game" doctrine is
16 attached to the Armstrong declaration as Exhibit F. CSI's order
17 declaring Armstrong a "suppressive person" is attached as Exhibit
18 G. CSI's OSA Executive Directive labelling Armstrong a "squirrel"
19 is attached as Exhibit H.

20 Based upon Armstrong's affirmative defenses, it is clear that
21 this request is relevant to the subject matter of the litigation.
22 (C.C.P. § 2017 (a); Colonial Life & Acc. Ins. Co. v. Sup.Ct.
23 (1982) 31 Cal.3d 785, 790; Cembrook v. Superior Court (1961) 56
24 Cal.2d 423, 429) Thus, these requests are relevant to Armstrong's
25 defense.

26 Particularly in light of the undisputed relevance of this
27 request, Scientology's objection that the request is intended to
28 "harass, oppress and annoy" it is without basis.

1 Finally, the objection that the request is "vague, ambiguous
2 and unintelligible" is factually without merit. The request is
3 not so ambiguous that Scientology is unable in good faith to frame
4 an intelligent response. (Deyo v. Kilbourne (1979) 84 Cal.App.3d
5 771, 783; Cembrook, supra. 56 Cal.2d at 429)

6 **B. The Requests Pertaining To Armstrong's**
7 **Alleged Breaches And Fraudulent Conveyances**

8 Armstrong's document requests Nos. 56 - 58 concern
9 plaintiff's fraudulent conveyance allegations. Plaintiff's
10 boilerplate objections that the requests are "vague, ambiguous,
11 incomprehensible, unintelligible...overbroad, burdensome,
12 oppressive...not relevant...premature" are unfounded. Plaintiff
13 states, however, that it will produce its documents responsive to
14 these requests. Plaintiff has produced documents in response to
15 request no. 56 - copies of Armstrong's and Walton's deposition
16 transcripts and returning documents earlier produced by Armstrong
17 to plaintiff - but none in response to nos. 57 and 58.
18 Plaintiff's production is merely cute, and a waste of time and
19 paper.

20 **C. The Requests Pertaining To Attorney Non-Representation**
21 **Contracts And Other Global Settlement Contracts**

22 Armstrong's document requests Nos. 8, 9 and 53 concern the
23 1986 "settlement agreement," and ask for all the related documents
24 from said "settlement," including CSI's "contracts" with
25 Armstrong's own attorneys which prevent said attorneys from
26 assisting him in his defense in this action. Plaintiff's
27 boilerplate objections that the requests are "not
28 relevant...annoying and oppressive... interposed...to harass" are
unfounded. Plaintiff's claim that "the request seeks to obtain

1 the records of settlements which have been ordered sealed by the
2 courts having jurisdiction" is untrue. No court ordered the
3 sealing of CSI's "contracts" with Armstrong's attorneys, and
4 "settling" "claimants" Walters, Franks and Sullivan, all key
5 witnesses for Armstrong and prominent in his verified answer, had
6 no lawsuits that could have been sealed. The requested documents
7 go to Armstrong's affirmative defenses; e.g., 10 (fraud and
8 deceit), 11 (duress and undue influence), 29 (cannot be
9 specifically performed), 32 (right to counsel). Request No. 53
10 seeks documents which support certain sworn statements made about
11 the "settlement agreements" by organization lawyer Lawrence
12 Heller. In its response plaintiff denies that the statements are
13 Heller's. This is a lie, and plaintiff must honestly respond to
14 the request. Heller's declaration is appended to the Armstrong
15 declaration as Exhibit A and incorporated herein by reference.

16 Said documents are also relevant to Armstrong's Thirty-Sixth
17 Affirmative Defense of Conflict of Interest which asserts:

18 Plaintiff is barred from bringing this action against
19 Armstrong because defendant Armstrong's former attorney
20 Michael Flynn, in conjunction with settling Armstrong's
21 case against Scientology-related entities, also settled
22 30 other cases, including cases of his own against
23 Scientology-related entities without procuring outside
24 counsel for Armstrong.

25 [Answer filed 11/30/93, at 20:25-21:2]

26 Moreover, whether or not Scientology entered into a contract
27 with Flynn whereby Flynn agreed never to represent Armstrong in
28 future litigation against Scientology is relevant to Armstrong's
defense that Flynn advised him that the salient provisions of the
settlement contract were not enforceable. [Answer filed 11/30/93,
at 3:8-11, 7:20-21, 20:11-17]

1 In addition if Scientology entered into contracts with other
2 persons the purpose of which was to suppress evidence and obstruct
3 justice, said documents are relevant to Armstrong's Seventh
4 Affirmative Defense of Illegality.

5 IV. MONETARY SANCTIONS SHOULD BE IMPOSED

6 Code of Civil Procedure section 2031 (1) states that the
7 Court shall impose a monetary sanction under Code of Civil
8 procedure section 2023 against any party and attorney who opposes
9 a motion to compel a further response unless it finds that the one
10 subject to the sanction acted with substantial justification or
11 that other circumstances make its imposition unjust.

12 Based upon the foregoing discussion, it is clear that the
13 only possibly valid objection was that which was based upon
14 relevance. As to each of the relevance objections, however, they
15 were interposed with no justification inasmuch as each request
16 dealt directly with the issues framed by the complaint and answer
17 in this litigation.

18 V. CONCLUSION

19 Based upon the foregoing arguments, defendant Gerald
20 Armstrong respectfully submits that the motion to compel further
21 responses should be granted and monetary sanctions imposed.

22 DATED: June 6, 1994

HUB LAW OFFICES

23
24
25 By: 

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Attorney for Defendant and
Cross-Complainant
GERALD ARMSTRONG